

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



July 7, 2005

Agenda ID # 4780

TO: PARTIES OF RECORD IN CASE 88-03-016

This is the draft decision of Administrative Law Judge (ALJ) Vieth. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN by LTC

Angela K. Minkin, Chief  
Administrative Law Judge

ANG:eap

Attachment

Decision **DRAFT DECISION OF ALJ VIETH** (Mailed July 7, 2005)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

The City of St. Helena, Town of Yountville,  
County of Napa, Napa Valley Vintners  
Association,

Complainants,

vs.

Napa Valley Wine Train, Inc.,

Defendant.

Case 88-03-016  
(Filed March 7, 1988)

**OPINION CLOSING PROCEEDING**

**Summary**

We close this proceeding, which has been closed and reopened several times over nearly two decades. Now, following issuance of the decision of the Court of Appeal on St. Helena's most recent petition, and denial of review by the California Supreme Court, Decision (D.) 01-06-034 remains in effect. D.01-06-034 determined that the Wine Train's excursion service is not a public utility service. Because there is no further action for us to take, there is no reason for this proceeding to remain open.

**Background and Discussion**

We do not repeat the long and complicated history of this proceeding, which can be reviewed in prior decisions.<sup>1</sup> As relevant here, the Court of Appeal's decision, filed on June 21, 2004, annulled two Commission decisions filed in this proceeding and two filed in another proceeding (which is already closed) "to the extent they deem the Wine Train a common carrier providing transportation subject to regulation as a public utility." (*City of St. Helena v. PUC*, 119 Cal. App. 4<sup>th</sup> 793, \*22; 2004 Cal. App. LEXIS 970.) The California Supreme Court denied review. (*City of St Helena v. PUC* (Sept. 29, 2004) 2004 Cal. LEXIS 9468.)

The two annulled decisions which originated in this proceeding are:

- D.03-01-042 (2003 Cal. PUC LEXIS 13), which granted rehearing of D.01-06-034 and reversed that decision. D.03-01-042 determined that the Wine Train is a public utility.
- D.03-10-024 (2003 Cal. PUC LEXIS 631), which denied rehearing of D03-01-042.<sup>2</sup>

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<sup>1</sup> Both Decisions (D.)99-08-018 and D.03-01-042 contain recitations of the procedural and substantive histories, which remain unaffected by the Court of Appeal's annulment.

<sup>2</sup> The other two annulled decisions were filed in Case (C.)99-01-020, a separate proceeding, now closed. They are:

- D.99-08-018, in which the Commission dismissed the complaint on the basis that it sought an advisory opinion; and
- D.03-10-025, which denied rehearing of D.99-08-020.

Nothing in the decision of the Court of Appeal requires us to reopen C.99-01-020.

The effect of the annulment of these decisions is that D.01-06-034 remains in effect. D.01-06-034, which modified two earlier decisions, determined that the Wine Train's passenger excursion service (sightseeing and dining during a two hour or more, roundtrip journey between Napa and St. Helena) is not a public utility service.<sup>3</sup>

### **Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with § 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments on the draft decision may be filed in accordance with Rule 77.7.

### **Assignment of Proceeding**

Dian Grueneich is the Assigned Commissioner and Jean Vieth is the assigned Administrative Law Judge in this proceeding.

### **Finding of Fact**

Nothing is pending in this proceeding that requires Commission action.

### **Conclusions of Law**

1. D.01-06-034 remains in effect, following the annulment of D.03-01-042 and D.03-10-024.

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<sup>3</sup> The recent *Gomez v. Superior Court of Los Angeles* (June 16, 2005) 2005 Cal. LEXIS 6557) does not require a different result, as it concerns the issue of whether an entity is a "carrier of persons for reward" under § 2100 and § 2101 of the Civil Code, not whether that entity is subject to regulation as a public utility under the Public Utilities Code. The *Gomez* Court opined: "We express no view on whether the Court of Appeal was correct that the Wine Train is not subject to regulation as a public utility, but we disapprove the decision [citation omitted] to the extent it suggests that, in general, a provider to the public of roundtrip sight-seeing excursions is not a carrier of persons for reward." (*Id.* 2005 Cal. LEXIS 6557, \*35.)

2. This proceeding should be closed, effective immediately.

**O R D E R**

**IT IS ORDERED** that Case 88-03-016 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.